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In the
Supreme Court of the United States

OCTOBER TERM, 1970

No. 1864

BEATRICE LINSCOTT,
PETITIONER

v.

MILLERS FALLS COMPANY,
UNITED ELECTRICAL, RADIO & MACHINE
WORKERS OF AMERICA (UE), and
UE LOCAL 274,
RESPONDENTS

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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Question Presented

Whether the non-discriminatory application of a valid union shop clause, made in accordance with §§7 and 8(a)(3) of the National Labor Relations Act, 29 U.S.C. 157 and

158(a)(3), in a collective bargaining agreement between the Respondent Company and Respondent Unions, under which Petitioner was discharged from employment for failure to pay union dues to the Respondent Unions, violated Petitioner's rights under the First, Fifth and Ninth Amendments to the Constitution of the United States, where Petitioner refused to pay such dues because of her religious beliefs.

Argument

I. This Case Raises No New or Important Question of Constitutional Law.

Substantially the same question has been raised in the Courts of Appeals for the Second, Ninth and Fifth Circuits, in cases arising under the union shop provisions of the Railway Labor Act. In each case this Court has denied certiorari. See *Otten* v. *Baltimore and O. R. Co.*, 205 F2d 58, final judgment affirmed *sub nom. Otten* v. *Staten Island Rapid Transit Railway Co.*, 229 F2d 919 (CA 2) *cert. den.*, 351 U.S. 983; *Wicks* v. *So. Pac. Co.*, 231 F2d 139 (CA 9) *cert. den.*, 351 U.S. 946; *Gray* v. *Gulf Mobile & Ohio R. Co.*, 429 F2d 1064 (CA 5) *cert. den.* 400 U.S. 1001.

This Court also denied certiorari in *Russell* v. *Catherwood*, 399 U.S. 936, involving the related issue as to whether, under the New York Unemployment Insurance Law, an applicant for unemployment benefits must stand ready to accept suitable employment, when tendered, even though acceptance of the employment would compel him to join a union as to which he has "conscientious scruples".

In *Railway Employers' Department* v. *Hanson*, 351 U.S. 225 this Court sustained the constitutionality of the union shop provisions of the Railway Labor Act (45 U.S.C. §152 Eleventh) against an attack that it violated the First and

Fifth Amendments by forcing men into ideological and political associations which violate their freedom of conscience, freedom of association and freedom of thought protected by the Bill of Rights. In *NLRB* v. *General Motors Corporation,* 373 U.S. 734, this Court upheld as valid the agency shop clause of a collective bargaining agreement, similar to the union shop clause of the collective bargaining agreement in this case (Pet. p. 6), under the provision of the National Labor Relations Act [29 U.S.C. 158(a)(3)]. The Court below found that there is no suggestion in the case at bar that the dues of the Respondent Unions were sought to be applied to non-union objectives or that the Union was one that is devoted to forcing its members into ideological molds via membership restrictions (Pet. p. 21). On the present record, therefore, there is no more infringement of constitutional rights than this Court found in *Hanson.*

The result reached by the majority in the Court below in construing the union shop provisions [29 U.S.C. §§158 (a)(3), 164(b)] of the National Labor Relations Act is in accord with the decisions in the *Otten, Wicks* and *Gray* cases, *supra,* construing the union shop provisions of the Railway Labor Act. The majority held that federal action was embodied in the application of the union shop provisions of the National Labor Relations Act to Petitioner here but that the federal interest or congressionally supported principle of the union shop, on balance, outweighed the injury to Petitioner (Pet. pp. 18-20, 22-23). Under the concurring opinion of Judge Coffin and the similar interpretation by the Court of Appeals for the Tenth Circuit in *Reid* v. *McDonnell Douglas Corporation* (No. 417-70, June 8, 1970, 77 LRRM 2609, 40 U.S. Law Week 2003) of the union shop provisions of the National Labor Relations Act, no federal action is involved and the plaintiff's complaint

does not describe a violation of her constitutional rights as the result of any federal action (Pet. p. 24). On either basis, there is no support for Petitioner's claim that this case raises an important question of constitutional law not previously decided by this Court.

II. THERE IS NO CONFLICT, IN PRINCIPLE, OR IN DECISIONS, BETWEEN THE DECISION OF THE COURT OF APPEALS IN THIS CASE AND OF THIS COURT IN *Sherbert* v. *Verner*, 374 U.S. 398, OR OF OTHER COURTS.

There is no conflict between the decision of the Court below and the decisions of every other Court of Appeals which has considered the question here presented. Indeed, insofar as the union shop provisions of the National Labor Relations Act are more neutral and permissive than those of the Railway Labor Act and do not involve governmental action necessary to bring the First Amendment in play (Pet. p. 24, *Reid* v. *McDonnell Douglas Corp., supra*), the decision of the Court below has additional and alternative support for its result.

Petitioner asserts, however, that in a variety of other cases, not involving the union shop provisions of the Railway Labor Act, National Labor Relations Act, or any other similar act, there is a conflict in principle with the decision of the Court below in this case. Petitioner's prime reliance is on *Sherbert* v. *Verner*, 374 U.S. 398, which upheld the right of a Seventh Day Adventist to receive unemployment benefits from the State of South Carolina notwithstanding her unavailability for Saturday work based on her religious beliefs. Petitioner seeks to attack the application by the Court below of the balancing or "compelling state interest" test of *NAACP* v. *Button*, 371 U.S. 415, 438, on the ground that it applied that test in general rather than specific

terms, contrary to the way it was applied, Petitioner asserts, in *Sherbert* v. *Verner* and other cases.

The short answer to this contention is that the Court below properly balanced the competing interests involved, but that Petitioner is dissatisfied with the result. The Court below referred to the strong governmental interest in the union shop, as found in *Hanson, supra,* the objective of industrial peace along the arteries of commerce, and the validity and importance of the congressional purpose to achieve uniform union membership, both to further peaceful labor relations and to require a fair sharing of the cost of collective bargaining (Pet. pp. 20-21). It considered Petitioner's argument that the effect on granting the exemption sought for religious objectors would be *de minimis* (Pet. p. 15) and rejected that argument, in view of the disruptive effects of union members being required to share their achievements and their work with non-union workers.[1] It considered the burden on the Petitioner as not involving the denial of physical sustenance, as in *Sherbert* v. *Verner,* but in being forced to take employment in a non-union shop, in less remunerative employment (Pet. p. 23) as Petitioner in fact alleges in her complaint and argument (Pet. pp. 7, 16). Having thus made a specific application of the balancing

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[1] Petitioner seeks in her argument to justify her claim of exemption on the basis that she has proposed payment of the equivalent of union dues to a non-union charity, and is willing to be excluded from certain benefits of union membership (Pet. p. 15). This argument misstates the Complaint. The Complaint does not state that Petitioner is willing to be excluded from any union benefits. On the contrary, the Complaint alleges (Pet. p. 7) that she will abide by the regulations of the shop and the union with *regard to wages and working conditions* and in the event of strike she would side with neither the employer by remaining at work nor with the union by participating in strike activities and would refrain from any interference with union picketing. (Italics supplied). The Court below rightly noticed the disruptive effect of a non-union worker, paying no dues to the union and not participating in strike activities while obtaining the benefits of union wages and union working conditions (Pet. p. 22 ftn. 3).

test in this case, the Court below properly concluded that the compelling state interest in the congressionally supported principle of the union shop outweighed the injury to the Plaintiff.

Respectfully submitted,

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